

# COTTONWOOD HEIGHTS

## RESOLUTION NO. 2013-10

### A RESOLUTION APPROVING ENTRY INTO AN INTERLOCAL AGREEMENT WITH SALT LAKE COUNTY FOR ELECTION SERVICES (2013 PRIMARY AND GENERAL ELECTIONS)

**WHEREAS**, the Interlocal Cooperation Act, UTAH CODE ANN. §11-13-101 *et. seq.* (the “*Interlocal Cooperation Act*”), provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

**WHEREAS**, Salt Lake County (the “*County*”) and the city of Cottonwood Heights (the “*City*”) are public agencies for purposes of the Interlocal Cooperation Act; and

**WHEREAS**, County desires to provide the services (“*Election Services*”) of its Clerk’s office, Elections Division, to the City for the purpose of assisting the City to conduct its 2013 primary and general municipal elections; and

**WHEREAS**, the City is in need of such Election Services; and

**WHEREAS**, the City and the County jointly desire to enter into an interlocal agreement (the “*Agreement*”) whereunder the County will provide Election Services to the City on the terms and conditions specified in the Agreement; and

**WHEREAS**, the City’s municipal council (the “*Council*”) met in regular session on 12 March 2013 to consider, among other things, approving the City’s entry into the Agreement; and

**WHEREAS**, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City’s entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the city council of the city of Cottonwood Heights that the attached Agreement with the County be, and hereby is, approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2013-10, shall take effect immediately upon passage.

PASSED AND APPROVED this 12<sup>th</sup> day of March 2013.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy  
Linda W. Dunlavy, Recorder

By Kelvyn H. Cullimore, Jr.  
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson <i>Absent</i>	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler <i>Absent</i>	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 12<sup>th</sup> day of March 2013.

RECORDED this 13 day of March 2013.

593701.1

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN**

**CITY OF COTTONWOOD HEIGHTS**

**-AND-**

**SALT LAKE COUNTY on behalf of the  
COUNTY CLERK ELECTION'S DIVISION**

THIS AGREEMENT is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between City of Cottonwood Heights ("City"), and SALT LAKE COUNTY, a political subdivision of the State of Utah ("County"), on behalf of the Salt Lake County Clerk's Office, Elections Division.

**WITNESSETH:**

WHEREAS, the County desires to provide the services of its Clerk's office, Elections Division, to the City for the purpose of assisting the City in conducting the City's 2013 primary and general municipal elections; and

WHEREAS, the City desires to engage the County for such services;

NOW, THEREFORE, in consideration of the promises and covenants hereinafter contained, the parties agree as follows:

1. **Term.** County shall provide election services to the City commencing on the date this Agreement is executed, and terminating on December 31, 2013. The term of this Agreement may be extended by mutual agreement in writing signed by all parties. Either party may cancel this Agreement upon thirty (30) days written notice to the other party. Upon such cancellation, each party shall retain ownership of any property it owned prior to the date of this Agreement, and the City shall own any property it created or acquired pursuant to this Agreement.

2. **Scope of Work.** The services to be provided by the Salt Lake County Clerk's Office, Elections Division shall be as set forth in the Scope of Work, attached hereto and incorporated by reference as Exhibit "A." Generally, the County Clerk shall perform all elections administration functions as set forth in Exhibit "A" and as needed to ensure implementation of the City's 2013 primary and general municipal election.

3. **Legal Requirements.** The County and the City understand and agree that the 2013 primary and general municipal election are the City's elections. The City shall be responsible for

compliance with all legal requirements for these elections and shall direct the manner in which the elections are conducted. The City agrees to translate ballot issues, if any, into Spanish. The County will provide the remaining Spanish translations for the ballot and other election materials. County agrees to work with the City in complying with all legal requirements for the conduct of these elections and conduct these elections pursuant to the direction of the City. County agrees to disclose and maintain election results through its website merely as a courtesy and convenience to the City. The City, not the County, is responsible to resolve any and all election questions, problems, and legal issues that are within the City's statutory authority.

4. **Cost.** In consideration of the services performed under this Agreement, the City shall pay the County an amount not to exceed the estimate given to the City by the County. The County shall provide a written invoice to the City at the conclusion of the elections, and the City shall pay the County from the invoice within thirty days of receiving it. The invoice shall contain a summary of the costs of the election and shall provide the formula for allocating the costs among the issues and jurisdictions participating in the elections. In the case of a vote recount, election system audit, election contest, or similar event arising out of the City's election, the City shall pay the County's cost of responding to such events, based on a written invoice provided by the County. The invoice amount for these additional services may cause the total cost to the City to exceed the estimate given to the City by the County. For such consideration, the County shall furnish all materials, labor and equipment to complete the requirements and conditions of this Agreement.

5. **Governmental Immunity.** The City and the County are governmental entities and subject to the Governmental Immunity Act of Utah, Utah Code Ann. §§ 63-30d-1, et seq. (1953, as amended) ("Act"). Subject to the provisions of the Act, the City and County agree to indemnify and hold harmless the other party, its agents, officers and employees from and against any and all actions, claims, lawsuits, proceedings, liability damages, losses and expenses (including attorney's fees and costs) arising out of or resulting from the performance of this Agreement to the extent the same are caused by any negligent or wrongful act or omission of that party, its officers, agents and employees. Nothing in this Agreement shall be deemed a waiver of any rights, statutory limitations on liability, or defenses applicable to the City or the County under the Act.

6. **Election Records.** The City shall maintain and keep control over all records created pursuant to this Agreement and to the elections relevant to this Agreement. The City shall respond to all public record requests related this Agreement and the underlying elections and shall retain all election records consistent with the Government Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 – 901 (1953, as amended) and all other relevant local, state and federal laws.

7. **Service Cancellation.** If the Agreement is canceled by the City as provided herein, the City shall pay the County on the basis of the actual services performed according to the terms of this Agreement. Upon cancellation of this Agreement, the County shall submit to the City an itemized statement for services rendered under this Agreement up to the time of cancellation and based upon the dollar amounts for materials, equipment and services set forth herein.

8. **Legal Compliance.** The County, as part of the consideration herein, shall comply with all applicable federal, state and county laws governing elections.

9. **Indemnification.** To the extent permitted by law, the City agrees to indemnify and hold County harmless, including providing legal defense costs on behalf of the County, as a result of any legal or administrative claim, action or proceeding brought against the County by any person or entity claiming that the County violated any state or federal law by providing election services under this Agreement.

10. **Interlocal Agreement.** In satisfaction of the requirements of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended ("Interlocal Act"), in connection with this Agreement, the City and the County (for purposes of this section, each a "party" and collectively the "parties") agree as follows:

- (a) This Agreement shall be approved by each party, pursuant to § 11-13-202.5 of the Interlocal Act;
- (b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to Section 11-13-202.5 of the Interlocal Act ;
- (c) A duly executed original counterpart of the Agreement shall be filed with the keeper of records of each party, pursuant to § 11-13-209 of the Interlocal Act;
- (d) Each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs; and
- (e) No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the City Recorder of the City and the County Clerk of the County, acting as a joint board. No real or personal property shall be acquired jointly by the parties as a result of this Agreement. To the extent that a party acquires, holds, and disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such party shall do so in the same manner that it deals with other property of such party.

11. **Counterparts.** This Agreement may be executed in counterparts by the City and the County.

12. **Governing Law.** This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.

13. **Integration.** This Agreement embodies the entire agreement between the parties and shall not be altered except in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

By \_\_\_\_\_  
Mayor Kelvyn Cullimore, Jr.

[SEAL]

Attest:

\_\_\_\_\_  
Linda Dunlavy, City Recorder

Approved as to form and compliance  
with applicable law:

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

SALT LAKE COUNTY

By \_\_\_\_\_  
Mayor Ben McAdams or Designee

Approved as to form and compliance  
with applicable law:

/s/ Melanie F. Mitchell  
Salt Lake County Deputy District  
Attorney  
Date: 2/14/2013

**Exhibit "A"**  
**2013 Municipal Elections**  
**Scope of Work**

The County shall provide to the City with an Official Register as required by Utah Code Ann. § 20-5-401, U.C.A. (as amended).

The City shall perform all administrative functions related to candidate filing requirements and all other requirements of Utah Code Ann. § 20A-9-203 (as amended), including all administrative functions related to financial disclosure reporting.

The City agrees to consolidate all elections administration functions and decisions in the County Clerk to ensure the successful conduct of multiple, simultaneous municipal elections. In a consolidated election, decisions made by the County regarding resources, procedures and policies are based upon providing the same scope and level of service to all the participating jurisdictions and the City recognizes that such decisions, made for the benefit of the whole, may not be subject to review by the City.

Services the County will perform for the City include, but are not limited to:

- Ballot layout and design
- Ballot ordering and printing
- Machine programming and testing
- Polling place and poll worker selection and assignment
- Delivery of supplies and equipment
- Provision of all supplies
- Absentee Ballot administration
- Early Voting administration
- Updating state and county websites
- Tabulating, reporting and canvassing election results
- Conducting recounts as needed
- All notices and mailings required by law (except those required by Utah Code Ann. § 20A-9-203)
- Direct payment of all costs associated with the election to include poll workers, polling places, rovers.

The City will provide the County Clerk with information, decisions, and resolutions and will take appropriate actions required for the conduct of the election in a timely manner.

The County will provide a good faith estimate for budgeting purposes (Exhibit "B"). Election costs are variable and are based upon the offices scheduled for election, the number of voters, the number of primaries, the number of jurisdiction participating as well as any direct costs incurred.

The City will be invoiced for its pro-rata share of the actual costs of the elections which will not exceed the estimate in Exhibit B.

In the event of a state or county special election being held in conjunction with a municipal election, the scope of services and associated costs, and the method of calculating those costs, will remain unchanged.

**Exhibit "B"**  
**2013 Election Estimate**  
**Cottonwood Heights**

Below is the good faith estimate for the upcoming *2013 Municipal Election* for the city of Cottonwood Heights. The city will be billed for actual costs, which will not exceed this estimate.

Assumptions for providing this estimate consist of the following:

- A. Active voters (as of 2/1/2013): 19,863
- B. Permanent Vote by Mail voters (as of 2/1/2013): 6,119
- C. Worst case primary election.
- D. General election for the 2013 offices below.
- E. 16 Cities participating in the consolidated 2013 elections.

2013 Offices	Estimate
Mayor	\$77,465.70
Council #3	
Council #4	